

## ARTICLE 4-12

### STATE PROCUREMENT PRACTICES

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#### CHAPTER 4-12-01 GENERAL RULES

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**4-12-01-01. Authority.** Rules set forth in this article are promulgated by the office of management and budget, in accordance with North Dakota Century Code sections 44-08-01, 46-01-01, 46-01-02, 46-02-01, 54-44-04, and 54-44.4-04 and other laws as contained in the North Dakota Century Code.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44-04, 54-44.4-04

**Law Implemented:** NDCC 44-08-01, 46-01-01, 46-01-02, 46-02-01, 54-44-04, 54-44.4-04

**4-12-01-02. Definitions.** The terms throughout this article have the same meaning as in North Dakota Century Code chapter 54-44.4, except:

1. "Approved vendor" means a person or business entity that has completed the registration requirements of North Dakota Century Code section 54-44.4-09 and been placed on the North Dakota state bidders list.
2. "Award" means the selection of a successful bidder or offeror for presentation of a purchase agreement or contract.
3. "Bidder" means a person or business entity that submits a response to an informal or formal bidding process.
4. "Bidders list" is the list of approved vendors that have completed the registration requirements of North Dakota Century Code section 54-44.4-09.
5. "Contractor" means a person or business entity having a contract with the state to furnish commodities or services for a certain price.
6. "Cooperative purchasing" means procurement conducted on behalf of two or more public procurement entities.
7. "Determination" means a document prepared by a procurement officer justifying the decision to take a certain action, including the reason or findings of fact and a conclusion.
8. "Director" means the director of the office of management and budget.
9. "Formal competition" means a solicitation process that requires bids or proposals to be submitted in a prescribed format in a sealed envelope, sealed package, or electronic means to be opened at a specified time.
10. "Informal competition" means a solicitation process that requests unsealed bids or proposals that may be conveyed by letter, telephone, or other means under conditions different from those required for formal competition.
11. "Negotiation" means to attempt resolution of an issue through conference, discussion, and agreement or compromise.
12. "Notice of intent to award" means notification that a bidder or offeror has been selected for award of a contract.
13. "Offeror" means a person or business entity that submits a response to an informal or formal request for proposal process.
14. "Procurement" means the process of purchasing, renting, leasing, or otherwise acquiring any commodities or services. This includes the process of acquisition, including description of requirements, solicitation

of bids or proposals, evaluation and selection of sources, preparation and award of a contract, and all phases of contract administration.

15. "Procurement file" means a written record maintained by the purchasing agency that contains documents related to the origination, solicitation, award, contract, and contract administration, including written determinations and approvals.
16. "Protest" means a written objection by an interested party to a solicitation, intent to award a contract, or award of a contract with the intent of receiving a remedial result.
17. "Responsive bidder or offeror" means a vendor who has submitted a bid or proposal that conforms in material respects to the requirements stated in the solicitation.
18. "Sole source" means a noncompetitive procurement in which a particular person or business entity is identified as the only qualified source capable of supplying the commodity and service.
19. "Solicitation" means a request for bids or proposals to provide commodities or services.
20. "Statement of work" means a detailed description of work the purchasing agency wants the contractor to perform.
21. "Vendor" means a person or business entity that offers to sell commodities or services.
22. "Written directives" means directives, policies, procedures, guidelines, and standards issued by the director of the office of management and budget or designee under North Dakota Century Code chapter 54-44.4.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-02, 54-44.4-04, 54-44.4-05, 54-44.4-06, 54-44.4-09, 54-44.4-10

#### **4-12-01-03. Determinations.**

1. In a determination made by a state employee or official, the state employee or official making the determination shall independently examine the material facts of the procurement and independently determine whether the procurement is eligible for the procurement method requested.
2. A state employee or official must not knowingly make a false statement in a determination required by law or these rules.

3. Determinations required by law or these rules must be in writing and retained in the procurement file.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44.4-04

**Law Implemented:** NDCC 54-44.4-02, 54-44.4-04, 54-44.4-05, 54-44.4-06, 54-44.4-09, 54-44.4-10, 54-44.4-12

#### **4-12-01-04. Applicability.**

1. These rules apply to all procurements of commodities and services, regardless of the funding source, by each state agency and institution in the executive branch of government, except this chapter does not apply to:
  - a. Those agencies or institutions governed by the state board of higher education, which are exempt under subsection 5 of North Dakota Century Code section 15-10-17 and North Dakota Century Code section 54-44.4-02;
  - b. Those commodities and services not subject to state procurement laws under North Dakota Century Code section 54-44.4-02;
  - c. Those procurements costing less than a specified amount and those specific commodities or services as determined by the director's written directive, pursuant to North Dakota Century Code section 54-44.4-02;
  - d. Contracts for services of legal counsel with attorneys who are not employed by the state, pursuant to North Dakota Century Code section 54-12-08;
  - e. Contracts for public buildings and public improvement contract bids, pursuant to North Dakota Century Code title 48;
  - f. Contracts for architect, engineer, and land surveying services, pursuant to North Dakota Century Code chapter 54-44.7;
  - g. Contracts for concessions, pursuant to North Dakota Century Code chapter 48-09;
  - h. Grant programs, not including procurements using grant dollars; or
  - i. Professional memberships.
2. The office of management and budget may procure exempted commodities or services upon request by an agency or institution.

3. The office of management and budget may require state agencies or institutions to provide an annual report of commodities and services exempted by the director's written directive.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44-04, 54-44.4-04

**Law Implemented:** NDCC 54-44.4-02, 54-44.4-02.1, 54-44.4-04

**4-12-01-05. Compliance with federal requirements and other funding sources.**

1. When a procurement involves the expenditure of federal assistance or contract funds, the office of management and budget or purchasing agency will comply with all federal laws and regulations that are mandatory and that are not presently reflected in these rules.
2. Nothing in these rules or the written directives of the office of management and budget prevents any state agency or institution from complying with the terms and conditions of federal funds, federal assistance, grants, gifts, bequests, or cooperative agreements.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 54-44-04, 54-44.4-04

**Law Implemented:** NDCC 54-44-04, 54-44.4-01, 54-44.4-04

**4-12-01-06. Procurement violations.** Violations of state laws, rules, and office of management and budget written directives relating to procurement will be reported to the employing agency for appropriate disciplinary action. A violation of state laws, rules, and office of management and budget written directives related to procurement may constitute action outside the employee's scope of employment.

**History:** Effective August 1, 2004.

**General Authority:** NDCC 32-12.2-03, 54-44.4-04

**Law Implemented:** NDCC 54-44.4-01, 54-44.4-02, 54-44.4-02.1, 54-44.4-04